IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4790 of 2006
With
SPECIAL CIVIL APPLICATION No. 4792 of 2006
To
SPECIAL CIVIL APPLICATION No. 4795 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUMANBEN WD/O NAGINBHAI KHUSHALBHAI PATEL & 4 - Petitioner(s)
Versus
STATE OF GUJARAT & 26 - Respondent(s)

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Appearance :
MR AJ PATEL WITH MR DEVANG T SHAH for Petitioner Nos.1 to 5.
DIPEN DESAI AGP for Respondent(s) : 1-3,
MR PM THAKKAR WITH PREMAL R JOSHI for Respondent No.4-27

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/04/2006

ORAL JUDGMENT

1.RULE. Mr.Premal Joshi, learned advocate and Mr.Dipen Desai, learned AGP waive the service of rule on behalf of the respondent Nos.4 and respondent No.1 - State.

2.As the common question of facts and law arise in these petitions, the same are being disposed of by this common judgment and order.

3.With the consent of the parties, the matter is taken up for final hearing.

4.These petitions have been filed by Sumanben widow of Nagjibhai Khushalbhai Patel and others challenging the judgment and order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat dtd.21/2/2006 in Revision Application No.41 of 2005 in dismissing the same and confirming the order passed by the Collector, Surat dtd.13/2/2005 in

RTS Appeal No.85 of 2004 and further modifying the said order to the extent of quashing and setting aside the Mutation Entry No.513, 514 and 940 with respect to the land in question and directing to mutate the name of all the heirs of Khushalbhai Govanbhai in the revenue record.

5.The dispute is with regard to the land bearing Survey Nos.16, 19(2), 75/2, 17, 88/P, 13 & 82/55, situated at village Ved, Taluka & District Surat and respective Mutation Entry Nos.513, 514 and 940.

6.It appears from the record that the aforesaid lands were in the name of deceased Khushalbhai Govanbhai and on his death on 21/2/1959, vide Mutation Entry No.513 and 514, the name of minor Naginbhai Khushalbhai through his guardian Ambaben widow of Khushalbhai Govanbhai came to be entered into. Thereafter on the

death of Naginbhai Khushalbhai, the name of the petitioners were mutated in the record of rights as his heirs vide Mutation Entry No.940 dtd.10/2/1989. It appears from the record that the respondent No.4 had filed Regular Civil Suit No.344 of 1996 in the court of learned Civil Judge (SD), Surat for declaration and permanent injunction with respect to the lands in question and the said suit is pending. It appears that the respondent No.4 herein challenged the challenged the aforesaid entry before the Deputy Collector, Surat vide RTS Appeal No.233 of 2003 after a period of 44 years and the Deputy Collector, Surat dismissed the said appeal and has further held that the said entries would be subject to the decision which may be rendered by the civil court in the aforesaid suit. Being aggrieved and dissatisfied with the aforesaid order passed by the Deputy Collector, Surat in RTS Appeal No.233 of 2003, the respondent No.3 herein

preferred an appeal before the Collector, Surat being RTS Appeal No.85 of 2004. That the Collector, Surat allowed the said appeal by quashing and setting aside the order passed by the Deputy Collector by further directing the Mamlatdar to enter the name of all the surviving heirs of Khushalbhai Govanbhai Patel in the revenue record. Being aggrieved and dissatisfied with the order passed by the Collector, Surat, the petitioners preferred a Revision Application No.41 of 2005 before the Secretary (Appeals), Revenue Department, State of Gujarat and the Secretary (Appeals), Revenue Department, State of Gujarat by its impugned judgement and order dtd.21/2/2006 dismissed the said Revision Application and further quashing and setting aside the Mutation Entry Nos.513, 514 and 940 and further directing to mutate the name of all the direct descendants of deceased Khushaldas Govandas Patel. Being aggrieved and dissatisfied with the same, the the petitioners

have preferred the present petition under Articles 226 and 227 of the Constitution of India.

7.Mr.A.J. Patel, learned advocate appears on behalf of the respective petitioners i.e. Sumanben widow of Naginbhai Khushalbhai and others i.e. heirs of Naginbhai Khushalbhai Patel. Mr.P.M. Thakkar learned senior advocate appears with Mr.Premal R.Joshi, learned advocate appearing for Kankuben Kikubhai Patel, daughter of Khushalbhai Govanbhai Patel – respondent No.4 herein. Mr.Dipen Desai learned AGP appears on behalf of State.

8.Mr.AJ Patel, learned advocate appearing on behalf of the respective petitioners i.e. heirs of deceased Naginbhai Khushalbhai Patel has vehemently submitted that the Collector, Surat as well as the Principal Secretary (Appeals), Revenue Department, State of Gujarat

were not justified in quashing and setting aside the Mutation Entry Nos.513 and 514 which was mutated in the name of Naginbhai son of Khushalbhai in the year 1959 more particularly on 29/3/1959 more particularly when the said entry came to be challenged by Kankuben after a period of 44 years and the Deputy Collector, Choryasi Prant, Surat was justified in dismissing the appeals preferred by Kankuben and by observing that the necessary entry can be made and/or will be made on the basis of the judgment and decree that may be passed by the learned Civil Judge (Surat) in Regular Civil Suit No.344 of 1996. It is further submitted by him that the Collector, Surat as well as the Secretary (Appeals), both have materially erred in disturbing the orders passed by the Deputy Collector. It is further submitted that in fact Kankuben had relinquished her right and therefore, she was not having any right, title and/or interest in

the land in question and she has no locus to challenge the entry in question. It is also further submitted by him that the authorities below have committed an error in not staying their hands till the suit is pending in the Civil Court with respect to the title of the land in question, is finally decided by the Civil Court. It is also further submitted that the authorities below have committed an error in not properly appreciating that the revenue authorities have no power to decide the disputed questions of title and only the competent Civil Court has power to decide the dispute between the parties with regard to the title of the lands in question. However, he has submitted that if the entries being Mutation Entry Nos.513, 514 and 940 are continued subject to the ultimate outcome of the Regular Civil Suit No.344 of 1996, he cannot have any objection. However, he has shown some reservation with regard to entering the names

of all the heirs of deceased Khushalbhai Govanbhai. However, he has further submitted that even if that can be done, subject to without prejudice to the rights and contentions of the parties nd subject to the final outcome of the Regular Civil Suit No.344 of 1996 and with an observation that merely on the basis of the entry in the revenue record, nobody can claim any right and that the entry in the revenue record does not confer any right, title and interest.

9.Mr.PM Thakkar, learned senior advocate appearing on behalf of Kankuben daughter of Khushalbhai has submitted that the entry in favour of Naginbhai in the year 1959 was mutated behind the back of the daughters of Khushalbhai and the name of son named Naginbhai only was entered into the revenue record and the names of all the heirs of deceased Khushalbhai Govanbhai were not mutated in the

revenue records of the land in question and as Kankuben and other daughters have their share in the lands in question, the said entry in favour of Naginbhai is rightly set aside and the names of all the heirs are rightly directed to be mutated in the revenue records, which is not required to be interfered with by this Court in exercise of the powers under Article 226 sand 227 of the Constitution of India. However he has submitted that if all the entries i.e. Mutation Entry Nos.513, 514 and 940 as well as entries in favour of all the heirs of deceased Khushalbhai Govanbhai are entered into and continued subject to the ultimate outcome of the Civil Suit No.344 of 1996 pending in th Court of learned Civil Judge (SD), Surat between the parties, he cannot have any objection.

10.At the outset, it is required to be noted that as held by the Honourable Supreme Court and

this Court in catena of judgments which is not disputed by the learned advocates appearing on behalf of the parties that the entry in the revenue records does not confer any right, title or interest merely on the basis of the Mutation Entry and the entry in the revenue record are only for the fiscal purpose for collection of cess. It is also not in dispute that the revenue authorities have no power, authority or jurisdiction to decide the question of title while exercising the powers under RTS proceedings. In the present case, as stated hereinabove, Regular Civil Suit No.344 of 1996 is pending in the court of learned Civil Judge (SD), Surat filed by Kankuben, daughter of Khushalbhai Govanbhai for declaration and partition and considering the rival contentions and submissions and the consensus between the parties, it is ordered that let Mutation Entry Nos.513, 514 and 940 be continued subject to subject to ultimate

outcome of the Regular Civil Suit No.344 of 1996 and at the same time, let the names of all the heirs of the deceased Khushalbhai Govanbhai be also mutated in the revenue records of the land in question without prejudice to the rights and contentions of the parties and subject to the ultimate outcome of the aforesaid Regular Civil Suit No.344 of 1996 pending in the court of learned Civil Judge (SD), Surat and with an observation that the entry in the revenue record does not confer any right, title or interest only on the basis of the mutation of the names of the parties in the revenue records ipso-facto and it is ultimately for the competent Civil Court to adjudicate the disputed questions of title and necessary shall be mutated in the revenue record on the basis of the judgment and decree that may be passed by the learned Civil Judge (SD), Surat in Regular Civil Suit No.344 of 1996. The revenue authority is directed to make

an additional entry in the revenue record that Regular Civil Suit No.344 of 1996 is pending in the court of learned Civil Judge (SD), Surat with regard to the land in question and all the aforesaid entries will be subject to the ultimate outcome of the Regular Civil Suit No.344 of 1996.

11.With the aforesaid observations and directions, these petitions stand disposed of. The impugned judgment and orders passed by all the authorities below are modified to the aforesaid extent only.

(M.R.SHAH,J.)

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